the channel to a trunked system It would take little imagination to apply this tactic to the bands below 470 Mhz. Therefore, to facilitate the most rapid migration of channels to actual exclusive use, with the concomitant benefit of making the channel available for centralized trunking, the Commission should not, under any circumstances, permit an existing licensee which is co-channel to an EUO licensee to increase the number of mobiles in service.

Proposed Rule 88.207 indicates that if an exclusive use overlay licensee obtains additional channels or base station sites in any band within 15.5 miles of the base station covered by the EUO license, the EUO system must meet the spectrum efficiency standard within 6 months of the construction deadline for the additional channels and the additional base stations. The Commission does not indicate to which spectrum efficiency plan it refers, the Spectrum Efficiency Standards indicated in proposed Rule 88.433, or the Additional Spectrum Efficiency Requirements of proposed Rule Section 88.1015. The Commission needs to point clearly to which requirement it intends to impose.

Suggestions For Specific Rules

Section 1.914

The Commission proposes to amend Rule Section 1.914 to require an application for modification of an existing license to "show in precise detail all particulars of the desired operation." Before adopting such a provision, however, the Commission should be sure that it will strictly enforce such a requirement. Despite similar requirements today, the Commission often returns applications which are defective as to essential information,

providing the applicants with opportunities to repair them. To avoid inconsistent treatment of similarly situated applications, the Commission should decide whether it will always dismiss an application which fails to "show in precise detail all particulars" or whether it will always disregard the rule. If it will always disregard the rule, the rule should not be adopted.

Sections 1.958(a) and 88.75(f):

Similarly, the Commission should revise proposed Rule Sections 1.958(a) and 88.75(f) to replace the word "may" at each of its occurrences with the word "will". Experience has shown that the use of the word "may" in the Commission's rules has led to the staff's taking inconsistent actions with respect to similarly situated defective applications, sometimes dismissing them and sometimes retaining them on file and giving the applicant a chance to fix them up under an Application Return Notice. In view of the rapidly growing backlog of work at the Commission's Licensing Division Office, the Commission should uniformly dismiss applications which are within the categories set forth in these Rules.

Section 88.75(e):

The proposed adoption of Rule Section 88.75(e) includes a commendable revision of the current rule, providing that an application for renewal of a license "must" be filed no more than 90 days nor less than 30 days prior to the end of the license term. The current rule, stating only that an application "should" be filed not less than 30 days prior to the end of the license term has resulted in controversies as to the acceptability for filing of

applications filed less than 30 days before expiration. While we believe that the proposed provision should be adopted, we caution that the Commission should be prepared to deal strictly and even handedly with all applications for renewal which are not filed at least 30 days before expiration, dismissing all of them.

Section 88.103:

The Commission should retain its present period of 60 days within which a returned application may be resubmitted. Many applications are returned for information which cannot reliably obtained and submitted within the proposed 30 day period. For example, an application which requires FAA study, frequency coordination, or environmental study may very well require more than 30 days to resubmit. While we recognize that such applications should have been complete and correct in the first instance, that does not always happen. Since return and accepting resubmission of an application within 60 days probably costs the Commission fewer of its scarce resources than return and death of one application, combined with the filing of a new application, the Commission should continue to allow applicants 60

Section 88.151(b):

Proposed Rule Section 88.151(b) states, "[a]n applicant proposing to operate an itinerant station . . .may operate the subject station . . .upon filing of an application that complies with Section *90.75*." This section number should read "88.75."

Section 88.195(a):

At proposed Rule 88.195(a), the Commission needs either to clarify what is meant by the sentence, "the freeze will commence on the day that the Commission processes the freeze application," or to revise the sentence. If the Commission intends that the freeze will commence on the date that the Commission grants the freeze application, then that is what the rule should say. It would appear that this is the only rational and reliable meaning, because any other meaning could create numerous instances in which the Commission was obligated to set aside or revoke a recently granted license. If the Commission interpreted the sentence to mean that the freeze would revert in effectiveness to the date on which the freeze application was filed, then the grant of a freeze order would require the Commission to examine its data base and either set aside or set for revocation hearing any license granted on the basis of an application which had been placed on file earlier than the freeze application.

Section 88.207(a):

Proposed Rule 88.207(a) should be drawn more narrowly. Recognizing that many major corporations have diverse land mobile radio communications needs, the Commission should not impose unduly on large land mobile users as a consequence of their using a

variety of radio systems. As a hypothetical example of the apparently unintended consequences of proposed subsection (a), consider a petroleum company which needs co-located UHF and High Frequency systems to cover vastly different geographic communications ranges. Such a licensee could be faced with enormous costs to modify existing systems when adding a single channel to meet a communications need that the existing systems could not possibly serve. To avoid placing a number of unintended burdens on licensees which the public interest does not require to be placed, the Commission should draft the rule more narrowly to deal only with those matters which are of actual concern.

Section 88.207(b):

Proposed Rule 88.207(b) has defied our best efforts to interpret or apply it. We are not sure that we understand either the intent of the proposal or what it might mean. If the intent is to attribute to each licensee whose EUO base station is managed by a System Manager all other stations licensed to or managed by the System Manager, then the reason for the proposal is either not clear from the explanation at page 19 of the NPRM, or the burden to be imposed would appear to exceed the benefit to the public interest.

If we understand proposed Rule 88.207(b) correctly, it could create a daisy chain of managed stations such that the Commission might attribute to the licensee of a station in Des Moines the authorization for a station in New York City and require the Des Moines station to replace all its equipment with more spectrum efficient gear solely because the System Manager took on a client in New York. If we understand the proposed subsection (b)

correctly, it might prevent some subterfuges, but, on balance, would probably have an adverse effect on the public interest by impairing the salutary benefits which the Commission has seen flow from the use of management agreements.

The two most significant benefits which the Commission has seen from the use of management agreements are 1) the number of new persons entering the competitive private carrier field has grow steadily over the past decade, and 2) the skills and experience of system managers have made dramatically more choices available in radio communications service than would have existed had new entrepreneurs been forced to rely on only their own marketing and management abilities and resources. Because the proposed rule could severely limit both the geographic reach and the number of systems managed by an effective system manager, the Commission should carefully balance costs and benefits before adopting proposed subsection (b).

With no explanation, whatsoever, the Commission proposes to prevent a system manager in the bands below 470 MHz from receiving financial compensation upon assignment of a Non-Commercial system license to an entity which will use the channel(s)

than by the old licensee, the proposed Rule would appear to impair the highest and best use of channels with no obvious benefit to the public interest.

When a licensee hires a system manager, its objective is to optimize its use of its scarcest resource, namely, the radio spectrum. If a system manager working for a non-commercial licensee finds a buyer who is willing to pay the price necessary to acquire the

"coordinators shall provide . . . " a defined level of protection, since the expression "will attempt to provide" neither assures any consistent treatment among applicants nor answers the question of what happens if the coordinator fails in its attempt.

The Commission should take this opportunity to remedy another deficiency in proposed Rule 88.219, in which it is stated that "applicants should be aware that in some areas, . . . separations of greater than 70 miles may be appropriate." As worded, the rule would neither put the applicant on notice as to the requirement nor set a standard by which all applications shall be considered. If greater separations are appropriate, the rule should state the circumstances under which they are required, and the should provide the standard by which the requirement shall be deemed to apply.

Section 88.223:

Proposed Rule 88.223 provides an admirably and necessary rule. The proposed rule should relieve some current uncertainties.

Section 88.229:

The rule proposed at Section 88.229 should be revised for clarity and to avoid unnecessary controversy. Rather than stating that a Finder's Preference may be awarded for the "failure of existing licensees to comply with various provisions of" enumerated rules, the Commission should precisely define those failures which will support a Finder's Preference. The proposed language leaves open, for example, the question of whether a Finder's

Preference will be awarded to a person who reports that a station was permanently discontinued only during the previous week, that the licensee intended to discontinue operation permanently at that time, but that the licensee had failed to comply with the requirement that it "must forward the station license to the Commission," which is one of the "various portions" of Rule 88.143(a).

Section 88.277(a):

Proposed Rule Section 88.277(a) reads almost exactly the same as Section 88.255, and proposed Rule Section 88.277(b) references a Rule Section 88.203, which is missing.

Section 88.321:

Proposed Rule Section 88.321 states that end users of shared systems with control stations that require FAA clearance or that may have a significant environmental effect or are in a quiet zone must be individually licensed for the control stations "prior to construction or operation." Since the Commission has fashioned different definitions for the terms "construction" and "operation" of a station, this section should specify either construction or operation, but not alternatives.

Section 88.429:

The Table listed in Proposed Rule 88.429 gives applicants double options. If the applicant's AAT is 197, he can choose an AAT of either 300 watts or 190 watts. The Table,

and other Tables designed identically, should be rewritten so that one category ends at a given number and the next begins with the next consecutive number.

There appears to be a typographical error in proposed Rule 88.429. Table C-15 is identical to the Table in the Part 90 Rules, with the exception of the last number, "10." In Part 90, the number was "100," and it does not appear that a change was intended.

Section 88.433:

Proposed Rule Section 88.433 specifies the date by which the licensee must convert to Very Narrow Band operations (VNB). The date of conversion depends on the market location of the system. Although the Commission grants operators in smaller markets more time to convert, its NPRM did not indicate why it would be necessary for all users in rural uncongested markets to convert. Over most of the land area of the United States, the spectrum is used little, yet the proposed Rules would force operators in these areas to reconfigure their systems entirely.

Just as the Commission is now willing to set aside some 40 years of block allocations, it should take the steps necessary to move away from the economic burdens unnecessarily imposed on the poorest areas of the nation by the policy of establishing uniform nationwide rules. Just as speed limits are higher outside of congested areas because the public interest does not require the same tight limitations where the risk of harm is less, the Commission

should tailor its bandwidth reduction requirements based on an evaluation of the need in, at the least, urban and rural divisions of the nation.

Recognizing and accommodating differences in need for spectrum in different areas could facilitate the Commission's proposals for two steps of bandwidth reduction. Were the Commission to define three levels of population congestion, for example, major markets, secondary markets, and rural areas, it could apply the steps of bandwidth reduction sequentially to those tiers. Were the Commission to require the major urban areas to precede the secondary markets in reducing to 12.5 kHz bandwidth by three to five years, users in the urban areas needing to replace equipment would have a market for it in the secondary and rural areas. If at a point in time six to ten years into the plan the Commission required urban areas to reduce to 6.25 kHz, secondary markets to 12.5 kHz, and the left the rural areas at current standards, persons in the first and second tiers could again fully amortize their investments by handing their equipment off to the next tiers down.

Because the rural and secondary markets are more thinly populated that the urban areas, those areas need to continue to operate high power stations indefinitely if they are to use radio economically. Accordingly, the Commission should carefully consider a permanent tiering of markets with respect to height/power restrictions.

At the very least, the Commission should have commissioned a study to indicate which areas of the country are most congested and which are least congested. It would not

be unthinkable to grant these areas of the country waivers or grandfather clauses. The operators would comply with the new bandwidths when their equipment reaches the end of its useful life and has to be replaced. By such a time, the only equipment on the market will most likely be narrow band or very narrowband equipment. In such a scheme, the operators with the fewest customers and the least chance of passing costs through would be less financially damaged by the move the narrow or very narrow band operations.

Section 88.433(a):

Proposed Rule 88.433(a) should be revised to read ". . . at least 4800 bits per second". Transmission at the proposed 4800 baud rate would be all but impossible on most of the proposed authorized bandwidths.

Section 88.437(d):

Proposed Rule 88.437(d) should be revised, as it contains a provision which may be counterproductive. The Rule would appear to make "monitoring the transmitting frequency for communications in progress" to be a necessary component of "reasonable precautions" for every station. Not every system needs to monitor the frequency. For example, trunked systems operating on exclusive channels generally have no real need to monitor the frequency. Systems on shared channels may agree to employ interference prevention methods which are more spectrum efficient than channel monitoring because they allow faster switching among users than monitoring. The Commission should rephrase the proposed Rule

to make channel monitoring the default standard of reasonableness, but should not impose a channel monitoring requirement on every station.

Section 88.713:

Likewise, there appear to be a typographical error in proposed Rule 88.713, which states that the maximum output power of police low-band VHF systems it not to exceed 750 watts. In Part 90, such systems were permitted 7500 watts, and it appears that the Commission did not intend to make change.

Sections 88.725, 88.729 & 88.733:

If the Commission truly desires to eliminate the waste of spectrum resulting from block allocations and channel balkanization, it should go the last mile and eliminate the frequency reservations proposed by Rules 88.725, 88.729, and 88.733. Experience has shown that some of the greatest waste of spectrum has occurred in these bands, due to the recalcitrance of the frequency coordinators having dominion over these channels. The coordinators of these channels have often refused to concur with interservice sharing applications, even though there was no pending application in the area for use of the requested channel. To release these channels for substantially greater use, the Commission should terminate these reservations.

Section 88.981(a)(1):

The Commission should revise proposed Rule 88.981(a)(1), which prohibits amendment of an application for a nationwide system in the 220-222 MHz band to substitute a new entity as the applicant. The requirement that an applicant submit evidence of a firm financial commitment from a lending institution (or other evidence of financial qualification) imposes on an applicant thousands of dollars of cost in the application process. The Rule can obstruct the sale of a substantial communications service company with no benefit to the public interest, because a sale during the pendency of the application would result in a total loss of the costs incurred, including the fee paid to obtain the "bank letter". Requiring the selling applicant to forfeit its application would either drive up the cost of such a sale at no benefit to anyone, or would effectively prohibit a communications service provider from selling its business until the Commission had disposed of its application. Recognizing that some two years passed between the time that the Commission accepted initial nationwide applications and the time that it acted on them, the restriction could have major unintended consequences for the communications service market when the Commission next accepts such applications. Therefore, the Commission should revise the Rule to allow the assignment, but require the amended application to be deemed newly filed, consistent with similar provisions applicable to other frequency bands.More Innovative Shared Use --

Section 88.983:

Proposed Rule 88.983 states that "[l]icensees for non-commercial channels must construct base stations in a minimum of 70 designated in their application within five years

of the initial license grant." It would appear that the Commission inadvertently omitted the word "market" from this rule section.

Section 88.1009:

(a) Since "cooperation" of one licensee with another is too slippery a concept on which to base the Commission's discretion to cancel a license, the Commission should revise the requirement to provide that an innovative shared use license may be cancelled for any station if the station is used to cause willful or repeated harmful interference to another licensee sharing the channel.

(b) The proposed requirement that "each innovative shared use licensee must guarantee that all other licensees can receive . . . all control signals used by its system" is not clear. The Commission proposes to authorize innovative shared use operating areas which would cover several hundred miles in each direction. Does the Commission mean by this proposal that a licensee in Montana must bear the cost of transporting the signals of its control station to southern California so that it can be received by a licensee there?

(c) The only "third party" qualified to resolve an interference problem is the Commission. The Commission should acknowledge that, difficult though it may be, resolution of interference problems was the motivating factor in establishment of the Federal Radio Commission in 1927, and it remains a primary, if often tedious and thankless, job

today. At the point that the Commission can entrust its primary task to some other entity, it will be time to close the Commission's doors and time for all its personnel to retire.

A provision that, merely upon the filing of complaints, the last man in would be "required to correct the interference" would give innovative shared use licensees the power to destroy one another, merely by filing unsubstantiated, unadjudicated complaints. The proposed provision would also give an existing user in an area the ability to preclude all later comers because the last man in would be unable to file an effective complaint against the older operator. If the Commission is to place a burden on any one party to correct interference, the Commission should first determine who is causing the interference and place the burden on him.

Sections 88.1095 & 88.1113(f)(3):

The Commission has designated two proposed Rules Sections as "88.1095," and two proposed Rule Sections as 88.1113(f)(3).

Conclusion

The Commission's proposals to reshape the whole of the Private Radio industry, including spectrum allocation, application processing, frequency coordination, system design, and the eligibility of users to occupy particular bands, is a daunting and almost overwhelming task. It is expected that there will be many supporters and detractors, each

with their own agenda. But the Commission's objectives must be clear among the banter of demands, defenses, and detractions. The Commission must focus on the public interest.

The public interest demands that government rule in a manner which supports the greater good for the majority of affected persons. The public interest demands that government not make promises which cannot or will not be kept. The public interest demands equity, access, and a clear voice in the manner in which resources are parceled and individual rights are supported.

Of greatest concern in this matter is the Commission all-too-obvious failure of explanation. The NPRM does not explain (1) why the alternatives proposed are the best and only alternatives (2) why there is no reflection of the obvious differences between rural and urban users (3) what the legal status, need for and function of frequency coordination entities might be (4) whether the Commission will possess the resources to respond to the increased demand for application processing services which will result from adoption (5) whether the Commission is prepared or willing to provide necessary enforcement of its proposed rules (6) whether the Commission's chilling of the complaint process is proper and necessary and (7) whether the Commission's proposals are designed to serve the public interest or the interests of only the largest manufacturers and industry members.

The woeful lack of explanation contained within the NPRM does not demonstrate reasoned decisionmaking. In fact, it creates greater questions than it answers -- questions

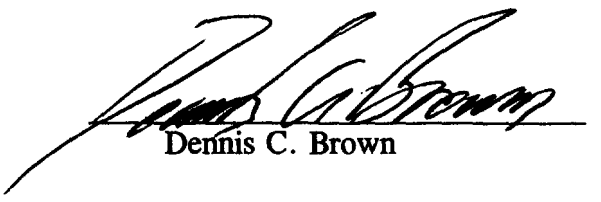
which demand illumination and thoughtful reflection. For this reason alone, the Commission should defer further consideration of this matter until and unless it publishes a Further Notice, designed to reach the largest issues contained within the Commission's proposals.

From the comments received, the Commission can begin culling through its proposed rules to separate wheat from chaff. It can eliminate uncertainty in its definitions. It can determine whether it has unknowingly created an unfair imbalance in it treatment of rural and urban licensees. It can determine whether the marketplace effects of its actions will create a peaceful, progressive movement toward efficiency; or an unworkable, panicked onslaught of profiteering. In sum, it can determine what good and what bad might flow from adoption of its proposals.

The Commission seeks much in its rule making. It seeks channels, efficiency, cooperation, and sacrifice. Yet, at this time, with this paucity of explanation, the Commission is not eligible to receive any of these things. Not until it met its initial and most paramount threshold -- to demonstrate that it might rule in the public interest.

Respectfully submitted,

BROWN AND SCHWANINGER



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